

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	Criminal No. 1:00-CR-00007-01
	:	
v.	:	(Judge Rambo)
	:	
EUGENE MCDONALD	:	(Electronically Filed)
	:	

MOTION TO WITHDRAW AS COUNSEL IN PROCEEDINGS
RELATED TO CRACK COCAINE AMENDMENT

AND NOW, comes the Federal Public Defender's Office, and files this
Motion to Withdraw as counsel, and in support thereof, avers as follows:

1. On January 9, 2008, Eugene McDonald filed a Pro Se Motion to Modify Term of Imprisonment pursuant to 18 U.S.C. § 3582(c)(2).
- 2 In this motion, Eugene McDonald asks for a sentence reduction based on the reduction of the crack cocaine guidelines.
3. On February 1, 2008, the Federal Public Defender's Office was appointed to represent Eugene McDonald for the purpose of addressing the crack cocaine amendment pursuant to 18 U.S.C. § 3582(c)(2).

4. On March 11, 2008, the Government filed a Response to Defendant's Motion to Modify Term of Imprisonment Pursuant to 18 U.S.C. § 3582(c)(2). In this Response, the Government notes Eugene McDonald is serving a mandatory minimum sentence of 120 months imprisonment.

5. At Eugene McDonald's plea hearing the Government noted that the case carried either a five or ten-year mandatory minimum period of imprisonment (PSR ¶ 2).

6. Eugene McDonald was arrested on November 20, 1999 in an apartment in Harrisburg (PSR ¶ 4).

7. The search of the room Eugene McDonald was found in contained 23.6 grams of crack, a .38 caliber handgun and \$17,362 in cash. (PSR ¶ 5 and 6).

8. The Drug Quantity Table of the Guidelines sets level 28 for at least 20 but less than 35 grams of cocaine base.

9. Eugene McDonald admitted that *some* of the money was from selling drugs (PSR ¶ 7).

10. The probation office converted the entire \$17,362 into crack (56.7 grams) to conclude Eugene McDonald was responsible for a total of 80.3 grams (PSR ¶ 12).

11. The conversion increased the mandatory minimum period from 5 years to 10 years and increased the offense level by 4 levels to base offense level 32.

12. As noted in the Presentence Report Addendum the high end of the newly calculated guideline range is 12 months lower than the mandatory minimum.

13. Eugene McDonald had one criminal history point and therefore his criminal history category is I.

14. Because it appears that Eugene McDonald is serving the lowest available sentence set by Congress, relief under the retroactive amendment is not possible.

15. On February 29, 2008, Chief Judge Kane issued a Standing Order with respect to appointment of counsel in proceedings related to the retroactive crack cocaine guideline amendments. In this Order, the Court states that counsel will be appointed where it appears that a defendant may be eligible for a sentence reduction.

16. Based on the above, the Federal Public Defenders Office moves this Court to withdraw as counsel in the proceedings related to the crack cocaine amendment pursuant to 18 U.S.C. § 3582(c)(2).

WHEREFORE, based on the above, the Federal Public Defenders Office respectfully requests that this Honorable Court grant the motion to withdraw as counsel in proceedings related to crack cocaine amendment.

Respectfully submitted,

Date: March 26, 2008

s/ James V. Wade

JAMES V. WADE, ESQUIRE

Federal Public Defender

Attorney ID #PA33352

100 Chestnut Street, Suite 306

Harrisburg, PA 17101

Tel. No. (717) 782-2237

Fax No. (717) 782-3881

<*James_Wade@fd.org*>

Attorney for Eugene McDonald

CERTIFICATE OF SERVICE

I, Lori J. Ulrich of the Federal Public Defender's Office, do hereby certify that I served a copy of the foregoing **MOTION TO WITHDRAW AS COUNSEL IN PROCEEDINGS RELATED TO CRACK COCAINE AMENDMENT**, via Electronic Case Filing, or by placing a copy in the United States mail, first class in Harrisburg, Pennsylvania, addressed to the following:

MARTIN C. CARLSON, ESQUIRE

[REDACTED]
[REDACTED]
[REDACTED]

William A. Behe, Esquire

[REDACTED]
[REDACTED]
[REDACTED]

DREW THOMPSON

[REDACTED]
[REDACTED]
[REDACTED]

EUGENE McDONALD

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date: March 26, 2008

s/ James V. Wade

JAMES V. WADE, ESQUIRE

Federal Public Defender

Attorney ID #PA33352

100 Chestnut Street, Suite 306

Harrisburg, PA 17101

Tel. No. (717) 782-2237

Fax No. (717) 782-3881

<James_Wade@fd.org>

Attorney for Eugene McDonald